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ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/767,050	LLACH, EDUARDO F.
	Examiner	Art Unit	
	KEVIN BATES	2456	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 April 2009*.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20 and 22-37* is/are pending in the application.

   4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20 and 22-37* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a)☐ All   b)☐ Some * c)☐ None of:

   1.☐ Certified copies of the priority documents have been received.

   2.☐ Certified copies of the priority documents have been received in Application No. _____.

   3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
   Paper No(s)/Mail Date *3-5-09*.

4) ☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

Response to Amendment

This Office Action is in response to a communication made on April 27, 2009.

The Information Disclosure Statement filed March 5, 2009 has been considered.

Claim 21 has been cancelled.

Claims 1, 3-5, 23, 28, and 36 have been currently amended.

Claims 1-20 and 22-37 are currently pending in this application.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-20 and 36 are rejected under 35 U.S.C. 101 because the claimed

invention is directed to non-statutory subject matter.

Regarding claim 1, the claim recites a method comprising the steps of

determining, matching, classifying, selecting, and delivery. The method results in no

transformation of an article from one state to another, nor are the claimed method steps

tied to a particular machine.

The limitation of a "distributing advertisements to a medium over a wide area

network" is mere intended use, plus claim 19 makes it clear that the medium and

network include embodiments which do not include particular apparatuses.

The limitation of "delivering the selected message to the content site from a

server" appears to be an insignificant post-activity solution, thus the hardware

embodiment of the server does not limit the method to a particular apparatus.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-15, 17-20, and 22-37 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Alberts (5937392) in view of Eldering (6216129), and in further

view of Cezar (6584492).

Regarding claim 1, Alberts teaches a method of distributing advertisements to a

medium, the method comprising:

determining a message categorization for each of a plurality of messages, each

message containing a corresponding advertisement (Column 7, lines 22 – 31);

classifying a plurality of messages according to a target criterion (Column 7, lines

22 – 31);

selecting a message from the plurality of matched messages using a selection

criterion, the selection criteria (Column 4, lines 46 – Column 5, line 6, where the ads are

selected based on a rotational system based on the frequency they were intended to be

presented); and

delivering the selected message to the content site the message comprising a

format adapted to display the corresponding content site (Column 2, lines 62 – 67).

Alberts does not explicitly indicate a price associated with the message or that specific content sites have categorizations where the site categorization is matched with the message categorization.

Eldering teaches an advertisement selection system that includes a cost or price associated with the message (Column 11, lines 1 – 11; Column 13, lines 55 – 67).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Eldering's teaching of including pricing information within the message selection criteria to optimize the price the advertiser is getting charged for the most effectively targeted ads.

Cezar teaches an ad campaign system that classifies both the messages and the websites (Col. 7, lines 20 – 32; Col. 8, lines 3 – 12).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Cezar's teaching of having website categorization so that ads can be better targeted to websites rather than just limited those ads based on client search terms.

Regarding claim 22, Alberts teaches a system for distributing advertisements to a medium, the system comprising:

a database containing a plurality of messages organized by a targeting classification (Column 7, lines 22 – 31);

a content inventory and inventory and deal manager configured to determine a message categorization for each of a plurality of messages (Column 7, lines 22 – 31) and select a message from the plurality of matched messages according to a selection

criteria (Column 4, lines 46 – Column 5, line 6, where the ads are selected based on a

rotational system based on the frequency they were intended to be presented); and

a message server configured to transmit the selected message from the

database to a content site (Column 2, lines 62 – 67).

Alberts does not explicitly indicate a cost associated with the message or that

specific content sites have categorizations where the site categorization is matched with

the message categorization.

Eldering teaches an advertisement selection system that includes a cost or price

associated with the message (Column 11, lines 1 – 11; Column 13, lines 55 – 67).

It would have been obvious to one of ordinary skill in the art at the time the

invention was made to use Eldering's teaching of including pricing information within the

message selection criteria to optimize the price the advertiser is getting charged for the

most effectively targeted ads.

Cezar teaches an ad campaign system that classifies both the messages and the

websites (Col. 7, lines 20 – 32; Col. 8, lines 3 – 12).

It would have been obvious to one of ordinary skill in the art at the time the

invention was made to use Cezar's teaching of having website categorization so that

ads can be better targeted to websites rather than just limited those ads based on client

search terms.

Regarding claim 33, Alberts teaches a system for distributing advertisements to

a medium, the system comprising:

an advertiser campaign manager configured to generate a plurality of campaigns (Column 3, lines 30 – 33), each campaign comprising a plurality of messages (Column 3, lines 34 – 54), targets (Column 7, lines 22 – 31), each message having an associated advertisement (Column 3, lines 30 – 33);

a storage device for storing the plurality of campaigns (Column 3, lines 30 – 33);

a content inventory and deal manager configured to classify the plurality of messages (Column 7, lines 22 – 31);

a marketplace configured to select a message from the database for distribution to a content site according to a selection criteria, the selection criteria including a business rule of the content site (Column 4, lines 46 – Column 5, line 6, where the ads are selected based on a rotational system based on the frequency they were intended to be presented); and

a message server configured to transmit the selected message to a content site (Column 2, lines 62 – 67), wherein the marketplace is coupled to the advertiser campaign manager, the storage device, the content inventory and deal manager, and the message server (Column 1, lines 58 – 65).

Alberts does not explicitly indicate a cost associated with the message or that specific content sites have categorizations where the site categorization is matched with the message categorization to target the messages to the content.

Eldering teaches an advertisement selection system that includes a cost or price associated with the message (Column 11, lines 1 – 11; Column 13, lines 55 – 67).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Eldering's teaching of including pricing information within the message selection criteria to optimize the price the advertiser is getting charged for the most effectively targeted ads.

Cezar teaches an ad campaign system that classifies both the messages and the websites (Col. 7, lines 20 – 32; Col. 8, lines 3 – 12).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Cezar's teaching of having website categorization so that ads can be better targeted to websites rather than just limited those ads based on client search terms.

Regarding claim 2, Alberts teaches the method of claim 1, wherein the selection criterion is that the content site meets one of a target, payment, and constraint of a message deal associated with the selected message (Column 4, lines 46 – Column 5, line 6, where the ads are selected based on a rotational system based on the frequency they were intended to be presented).

Regarding claim 3, Alberts teaches the method of claim 1, wherein the message is automatically generated based on a characteristic of the content site (Column 7, lines 22 – 31).

Regarding claims 4 and 23, Alberts teaches the method of claims 1 and 22, wherein the message is selected from the group consisting of a text message, a video message, and an audio message (Column 1, lines 9 – 12).

Regarding claim 5, Alberts teaches the method of claim 1, further comprising tracking the delivery of a selected message, thereby generating tracking information (Column 4, lines 4 – 6).

Regarding claims 6 and 24, Alberts teaches the method of claims 1 and 22, wherein the selection criteria comprises a ranking of each of the plurality of messages (Column 4, lines 46 – Column 5, line 6, where the ads are ranked based on constants attempting to create a desired frequency of selection of the ads).

Regarding claims 7 and 25, Alberts teaches the method of claims 6 and 24.

Alberts does not explicitly indicate wherein the ranking is performed using one or more price metrics, each price metric related to a cost of displaying the advertisement on the media.

Eldering teaches an advertisement selection system that includes a cost or price associated with the message which factors into selection of ads (Column 11, lines 1 – 11; Column 13, lines 55 – 67).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Eldering's teaching of including pricing information within the message selection criteria to optimize the price the advertiser is getting charged for the most effectively targeted ads.

Regarding claim 8, Alberts teaches the method of claim 7, wherein the selection criterion further comprises a ratio of the display count of the advertisement to a display count of the remaining advertisements in the category (Column 7, lines 32 – 45, where categorical ads are attempted to be selected when the system determines they are

most effective, but ultimately the system is designed to produce a ratio of displayed items as seen in column 6, line 50 – column 6, line 10).

Regarding claim 9, Alberts teaches the method of claim 1, wherein classifying the plurality of messages is performed according to a classification scheme (Column 7, lines 22 – 31).

Regarding claim 10, Alberts teaches the method of claim 1, wherein the target criterion is that an advertisement is related to a characteristic of data related to a user (Column 7, lines 7 – 21).

Regarding claim 11, Alberts teaches the method of claim 10, wherein the characteristic is a topic entered by the user into a Web page (Column 7, lines 22 – 31).

Regarding claim 12, Alberts teaches the method of claim 10, wherein the characteristic is a keyword supplied to a search engine (Column 7, lines 22 – 31, where a user access information on the internet through search engines).

Regarding claim 13, Alberts teaches the method of claim 10, wherein the characteristic is a demographically identifiable content (Column 7, lines 9 – 21; see also Eldering, Column 6, lines 52 – 58).

Regarding claim 14, Alberts teaches the method of claim 10, wherein the characteristic is a geographically identifiable content (Column 7, lines 9 – 21).

Regarding claim 15, Alberts teaches the method of claim 1, wherein the medium comprises a node on the Internet (Figure 1, element 10).

Regarding claims 17, 18, 19, and 20, Alberts teaches the method of claim 1.

Alberts does not explicitly indicate wherein the medium comprises a television set, radio signal, and non-electronic newspaper.

Eldering teaches an advertisement system that includes directing ads to may mediums besides the internet, these mediums include a television set (Column 5, lines 57 – 63), radio signal (Column 5, lines 41 – 50), and non-electronic newspaper (Column 6, lines 17 – 21).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Eldering's teaching of increasing the range of the campaign advertising system in Alberts to include mediums of communication besides websites and the internet to further expand an advertiser's ability to target advertisements.

Regarding claim 26, Alberts teaches the system of claim 24, wherein the ranking criterion is related to the number of times that a message has been displayed on a medium (Column 4, lines 4 – 6).

Regarding claim 27, Alberts teaches the system of claim 22, further comprising a marketplace coupled to the content inventory and deal manager, the marketplace configured to transmit a selected message to a content site (Figure 1, where the inventory is the database, the central controller is the manager, and the marketplace is the ad servers).

Regarding claim 28, Alberts teaches the system of claim 27, further comprising a tracking server coupled to the marketplace, the tracking server configured to collect data on the messages transmitted to a content site (Column 4, lines 4 – 6).

Regarding claim 29, Alberts teaches the system of claim 28, further comprising an advertiser and campaign manager coupled to the marketplace, the advertiser and campaign manager configured to manage campaigns, thereby generating a set of message deals that content sites can accept or reject (Column 3, lines 30 – 54, where the message deals is the agreed upon frequency of display certain advertisements will receive within the system).

Regarding claim 30, Alberts teaches the system of claim 29, further comprising an advertiser reporting system coupled to the marketplace, the advertiser reporting system configured to collect data on message deals and generate reporting data (Column 4, lines 11 – 32).

Regarding claim 31, Alberts teaches the system of claim 27, wherein the marketplace is further configured to transmit a message to a content site in response to a message deal of a message matching a business rule of the content site (Column 3, lines 58 – Column 4, line 3; Column 3, lines 34 – 54, where the business rule is the ratios and frequency of display the advertisement will receive).

Regarding claim 32, Alberts teaches the system of claim 22, wherein the content inventory and deal manager is configured to generate a tag embedded in a page configured to be transmitted to a content site, the tag identifying a location in the page for displaying the advertisement (Column 1, lines 10 – 20).

Regarding claim 34, Alberts teaches the system of claim 33, wherein the content inventory and deal manager is configured to classify the plurality of messages

according to one of content classification, a demographic classification, or a geographic

classification (Column 7, lines 7 – 21).

Regarding claim 35, Alberts teaches the system of claim 33, wherein the

advertiser campaign manager is configured to automatically generate a message based

on the metadata of a product or service being advertised (Column 3, lines 60 – 64).

Regarding claim 36, the claim is rejected under the same rationale as claim 5.

Regarding claim 37, the claim is rejected under the same rationale as claim 30.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Alberts in view of Eldering and Cezar, and further in view of Kaneko (6993553).

Regarding claim 16, Alberts teaches the method of claim 1.

Alberts does not explicitly indicate wherein the medium comprises a mobile

phone display.

Kaneko teaches a system for delivering and displaying advertisements onto

mobile phones (Column 5, lines 20 – 22; Column 6, lines 27 – 37).

It would have been obvious to one of ordinary skill in the art at the time the

invention was made to use Kaneko's teaching of displaying ads on mobile phones in

Alberts' system to allow the campaign data system of Alberts to be configured to direct

ads towards mobile phone users.

Response to Arguments

Applicant's arguments filed November 7, 2008 have been fully considered but

they are not persuasive.

The applicant argues that Alberts improved by the teachings of Eldering and

Cezar does not disclose a target criterion, a selection criteria, or where the selection

criteria comprise a price associated with the message.

The examiner disagrees:

The applicant defines target criterion as

an advertisement is related to a characteristic of data related to a user. The characteristic is a
topic entered by the user into a Web page, a keyword supplied to a search engine, a
demographically identifiable content, a geographically identifiable content, or any combination of
these.
See Specification pg 3, lines 9-12.

Alberts teaches in Col. 7, lines 6 - 31 teaches that each advertisement message

gets associated with tables based on keywords or subject matter. Associating

messages with keywords or a certain subject is considered categorizing or classifying

those messages. Alberts further teaches the messages are selected based on the

keywords chosen by the user and also other considerations such as geographical

location and the such. These are all elements that are part of the applicant's

specification definition of target criterion, thus Alberts teaches selecting messages

based on keywords and geographic identifier content, thus target criterion.

The applicant defines selection criterion as

a ranking of each of the plurality of messages. Preferably, the ranking is performed using one or
more price metrics, each price metric related to a cost of displaying the advertisement on the
medium. In another embodiment, the selection criterion further comprises a ratio of the display
count of the advertisement to a display count of the remaining advertisements in the category.
Preferably, classifying the plurality of messages is performed according to a classification
scheme.
See Specification pg 3, lines 3-8.

Alberts teaches in Col. 7, lines 32 - 45 that the messages are selected for display based on the table location and "counters" where the counters are attempting to display the ads at a certain frequency, which can equate to the definition of selection criterion as defined by the applicant in his specification..

Alberts as shown in the mapped rejection does not consider price within that selection determination. Eldering teaches in Col. 11, lines 1 – 11 and Col. 13, lines 55 – 67, selecting a message, where the selected message has a price associated with it and that the price plays some role in the selection and the message. The claim only requires a vague correlation between the selection, message and the price, which Eldering provides by selecting a message and the price for that message.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEVIN BATES whose telephone number is (571) 272-3980. The examiner can normally be reached on 9 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on (571) 272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kevin Bates/
Primary Examiner, Art Unit 2456